

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

DECEMBER 1996 SESSION

<p><b>FILED</b></p> <p>February 20, 1997</p> <p>Cecil W. Crowson Appellate Court Clerk</p>
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STATE OF TENNESSEE,

Appellee,

V.

STACY DOWLEN,

Appellant.

)  
 ) C.C.A. No. 01C01-9602-CC-00079  
 )  
 ) Robertson County  
 )  
 ) Honorable John H. Gasaway, III, Judge  
 )  
 ) (Second Degree Murder)  
 )

FOR THE APPELLANT:

Michael R. Jones  
 District Public Defender  
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FOR THE APPELLEE:

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OPINION FILED: \_\_\_\_\_

**AFFIRMED**

**PAUL G. SUMMERS,**  
 Judge

**OPINION**

The appellant, Stacy Dowlen, was indicted for first degree murder. He was found guilty by a jury of second degree murder. He appeals raising the following issues for our review: (1) whether the evidence was sufficient to support his conviction; and (2) whether the trial court erred in allowing the prosecution to examine its own witness using prior inconsistent statements. Upon review, we affirm.

## FACTS

The victim in this case was Richard Stovall. One week prior to the murder the appellant and Stovall were involved in an altercation. Stovall had apparently fired a shotgun into the air in close proximity to the appellant.

One week later the appellant left a party and spotted Stovall's car. The appellant approached the car with a .25 caliber pistol. He walked up to the driver's side door and questioned Stovall about the shotgun incident. Stovall denied firing the shotgun. An argument ensued. The appellant shot Stovall twice. Witnesses testified that no one in the car appeared to reach for a weapon before the appellant fired the fatal shots.

## I

The appellant contends that the evidence was insufficient to find him guilty of second degree murder beyond a reasonable doubt. Specifically, he contends that the facts of the case establish the elements of self-defense, or in the alternative, voluntary manslaughter.

Great weight is accorded jury verdicts in criminal trials. Jury verdicts accredit state's witnesses and resolve all evidentiary conflicts in the state's favor.

State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983); State v. Banes, 874 S.W.2d 73, 78 (Tenn. Crim. App. 1993). On appeal, the state is entitled to both the strongest legitimate view of the evidence and all reasonable inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832 (Tenn. 1978). Guilty verdicts remove the presumption of innocence, enjoyed by defendants at trial, and replace it with a presumption of guilt. State v. Grace, 493 S.W.2d 474 (Tenn. 1973). Appellants, therefore, carry the burden of overcoming a presumption of guilt when appealing jury convictions. Id.

When appellants challenge the sufficiency of the evidence, this Court must determine whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of a crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307 (1979); State v. Duncan, 698 S.W.2d 63 (Tenn. 1985); Tenn. R. App. P. 13(e). The weight and credibility of a witness' testimony are matters entrusted exclusively to the jury as the triers of fact. State v. Sheffield, 676 S.W.2d 542 (Tenn. 1984); Byrge v. State, 575 S.W.2d 292 (Tenn. Crim. App. 1978).

Second degree murder is defined as "a knowing<sup>1</sup> killing of another." Tenn. Code Ann. § 39-13-210 (a)(1). The appellant admitted that he fired two shots into the victim. The jury apparently rejected his self-defense theory. A rational trier of fact could have found sufficient evidence that the appellant knowingly killed his victim. This issue is without merit.

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<sup>1</sup>"Knowing" is defined by Tenn. Code Ann. § 39-11-106(20) as:

"Knowing" refers to a person who acts knowingly with respect to the conduct or to the circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware when the conduct is reasonably certain to cause the result.

The appellant next contends that the trial court erred in allowing the state to question a witness about three prior inconsistent statements made to the police. He claims the state was attacking its own witness' credibility and then attempting to bolster his credibility with the consistent portions of his prior statements. The state contends it sought to admit these statements for the witness to identify them, admit they contained lies, and to then explain why he made them.

The decision to admit or exclude evidence is left to the sound discretion of the trial judge. State v. Baker, 785 S.W.2d 132, 134 (Tenn. Crim. App. 1989). The judge's decision will not be disturbed absent a clear showing of abuse. Id.

The appellant's contention is without merit. Prior inconsistent statements are normally used to impeach a witness on cross-examination. It can be gleaned from the record that the state was attempting to preemptively prevent impeachment by bringing out its witness' inconsistent statements on direct examination. Had the state waited and allowed the witness to be impeached on cross-examination, it would have then been allowed to rehabilitate the witness on redirect. Regardless of the timing, the witness would have been allowed to explain the prior inconsistent statements. Therefore, even if it was error for the trial judge to allow the prior statements to come in on direct examination, it was harmless. The appellant has failed to show an abuse of discretion.

Upon review, we find no error of law mandating reversal. The judgment of the trial court is affirmed.

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PAUL G. SUMMERS, Judge

CONCUR:

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WILLIAM M. BARKER, Judge

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JOE G. RILEY, Judge